Doc Code: AP.PRE.REQ

PTO/SB/33 (01-09)
Approved for use through 02/28/2009. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional): 2222.5460000

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]

on _____

Signature _____

Typed or printed name _____

Application Number	Filed
10/690,243	October 20, 2003

First Named Inventor: Michael Frederick KENRICH

Art Unit	Examiner
2439	Farid HOMAYOUNMEHR

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

- [ ] applicant/inventor.
- [ ] assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)
- [X] attorney or agent of record. Registration number 28,458
- [ ] attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____

Signature

Glenn J. Perry
Typed or printed name

(202) 371-2600
Telephone number

May 13, 2009
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

[X] *Total of One (1) forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	Confirmation No.: 3428
Michael Frederick KENRICH	Art Unit: 2439
Appl. No.: 10/690,243	Examiner: Farid HOMAYOUNMEHR
Filed: October 20, 2003	Atty. Docket: 2222.5460000
For: **Method and System for Proxy Approval of Security Changes for a File Security System**	

Arguments to Accompany the Pre-Appeal Brief Request for Review

Mail Stop AF

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant hereby submits the following Arguments, in five (5) or less total pages, as attachment to the Pre-Appeal Brief Request for Review Form (PTO/SB/33). A Notice of Appeal is concurrently filed.

Arguments

I. Rejection of Claims 1, 4, 15, and 30 under 35 U.S.C. § 103(a)

Claims 1, 4, 15 and 30 were rejected under 35 U.S.C. § 103(a) as allegedly being obvious over U.S. Patent Application Publication No. 2002/0156726 to Kleckner et al. ("Kleckner") in view of U.S. Patent Application Publication No. 2002/0062240 to Morinville ("Morinville"). Applicant respectfully traverses this rejection.

Independent claim 1 recites, *inter alia*, "the security change being used for determining access rights to an ***electronic file***." Applicant submits that the combination of Kleckner and Morinville clearly nowhere teaches or suggests at least this feature of claim 1.

In the Final Office Action of February 20, 2009, the Examiner clarifies that the "records (files)" of Kleckner are being interpreted as the "electronic file" of claim 1. (Final Office Action, p. 5). Specifically, the Examiner argues that "Kleckner controls amendment of transactions, and amending a transaction ***requires access to the***

transaction record." (Final Office Action, p. 4). In the Advisory Action of April 27, 2009, the Examiner continues the line of argument that the process of amending a "trade record" in Kleckner is the same as "determining access rights to an ***electronic file***," as recited in claim 1. Access rights include, by way of example and not limitation, allowing a user of a group "to retrieve a copy of the file (document) via a data network". (Published Specification at [0027]). Applicant has set out to demonstrate that amending a transaction in Kleckner does not, in fact, require access to the "trade record" (i.e., transaction record) in a manner determined by a security change, instead resulting in the creation of a ***separate*** record known as a "trade amendment record."

The process for amending a trade is described in detail in Kleckner. (Kleckner, [0136]-[0144]). The amendment process results in the creation of a ***separate*** "trade amendment record" containing the amendment request. (Kleckner, [0138]). This trade amendment record is not the subject of any "access rights" which affect access to the underlying trade amendment record itself. Regardless of whether a user has amendment permission, that user is able to create a trade amendment record. The only result of insufficient permissions is the rejection of the amendment request, once made. (Kleckner, FIG. 2, 1204; [0138] "CX 200 looks up an ***amendment permission*** for user 310 in permission table 305. If the entry in permission table 305 is null (empty), CX 200 ***rejects the trade amendment request***.").

The Kleckner amendment ***does not actually touch the original trade record***. Only "[u]pon receiving the amendment record, CX 200 records the acceptance or cancellation of the amendment in database 301 ... [and] checks the signatures and if all are valid and respective organization policies are met, updates [a] status field for the amended and amendment trades to reflect the acceptance or cancellation." (Kleckner, [0143]). At no point in the Kleckner process does a user have access to the original trade record such that "access rights to ***an electronic file***" would even apply. Only the CX of Kleckner is able to finally update the amended trade, and only to "reflect the acceptance" of the amendment record, not to actually amend the original trade record. Therefore, even assuming, *arguendo*, that the "trade record" of Kleckner is treated as the "electronic file" of claim 1, nowhere does Kleckner teach or suggest actually controlling access rights to this trade record.

In the Advisory Action, the Examiner argues:

> However, the rejection is not based on amending the original trade record. In addition, as admitted by the applicant, Kleckner teaches a mechanism to "reflect the acceptance" of the amendment record. This is considered amending the record. In either case, Kleckner teaches user access rights being a factor in determining whether a security process should proceed or not. (Advisory Action, p. 2).

The updating of "the status field for the amended and amendment trades to reflect the acceptance or cancellation" does not teach or suggest "access rights to an electronic file" in any manner understood by one skilled in the relevant arts. (Kleckner at [0143]). As it is the CX, and only the CX, of Kleckner that is able to update only this status indicator of the amended and amendment trades, it is clear that only the CX has "access rights to ***an electronic file***," as recited in claim 1. One skilled in the relevant arts would not look to Kleckner as teaching or suggesting a "security change being used for determining access rights to ***an electronic file***," as the CX is the only entity disclosed in Kleckner capable of actually accessing any such electronic file corresponding to a "trade record," and does so without any particular "access rights" being discussed.

Kleckner does not actually provide access to an electronic file, and therefore cannot teach or suggest determining the access rights thereto. Accordingly, it cannot be the case that Kleckner's "Policy Approval Records" are "used for determining ***access rights*** to an ***electronic file***," as recited in claim 1.

The Examiner further argues in the Advisory Action:

> Even if as argued by the applicant, the details of control process involve a step of creating a separate "trade amendment record," the eventual outcome is controlling the trade amendment record. Therefore, Kleckner teaches a system that controls access to transaction amendment records. (Advisory Action, p. 2).

As noted above, Kleckner does in fact control amendment of transactions, but the Examiner is incorrect in stating that the eventual outcome of creating a separate "trade amendment record" is controlling the trade amendment record. As previously stated, amending a transaction creates an entirely new amendment trade record, separate from the original trade record, without accessing or altering the original trade record. Thus, there is no concept in Kleckner of "determining access rights to an electronic file," as

recited in claim 1. The trade amendment record itself is also not the subject of any access rights, as the only result of insufficient permissions is the rejection of the amendment request. (Kleckner, FIG. 2, 1204; [0138] "CX 200 looks up an ***amendment permission*** for user 310 in permission table 305. If the entry in permission table 305 is null (empty), CX 200 ***rejects the trade amendment request.***"). Having the trade amendment rejected is not a determination of "access rights to an electronic file," because any access to a file (i.e., creating the trade amendment request) happens without concern to access rights.

Morinville does not supply the missing teaching or suggestion of Kleckner with respect to at least the above-noted distinguishing feature of claim 1, nor does the Examiner assert Morinville as supplying the missing teaching. For at least the aforementioned reasons, Kleckner and Morinville do not teach or suggest at least "the security change being used for determining access rights to an electronic file," as recited in claim 1. Accordingly, the Examiner has failed to establish a *prima facie* case of obviousness of claim 1 over Kleckner and Morinville. Moreover, dependent claim 4 is also not rendered obvious by Kleckner and Morinville for at least the same reasons as claim 1, from which it depends, and further in view of its own respective features.

Independent claims 15 and 30 are also not rendered obvious for similar reasons as those presented with regard to claim 1.

Reconsideration and withdrawal of the rejection of claims 1, 4, 15, and 30 under 35 U.S.C. § 103(a) is therefore respectfully requested.

II. Rejection of Claims 2, 3, 5-14, 16, 18-29, and 31-36 under 35 U.S.C. § 103(a)

Claims 2, 3, 5-14, 16, 18-29 and 31-36 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Kleckner and Morinville, and further in view of U.S. Patent No. 7,131,071 to Gune et al. ("Gune"). Applicant respectfully traverses this rejection.

As stated above with regard to independent claims 1, 15, and 30, Kleckner and Morinville do not teach or suggest each and every feature of the aforementioned independent claims. Gune does not supply the missing teaching with respect to at least

the above noted distinguishing features of these claims. Thus, Gune fails to cure the deficiencies of Kleckner and Morinville, as noted above with regard to claims 1, 15, and 30. Accordingly, claims 1, 15, and 30 are not rendered obvious by Kleckner, Morinville, and Gune.

Claims 2, 3, 5-14, 16, 18-29, and 31-33 are not rendered obvious by Kleckner, Morinville, and Gune for at least the same reasons as claims 1, 15, and 30, from which they respectively depend, and further in view of their own respective features. Also, independent claims 34-36 are not rendered obvious for similar reasons as those presented with regard to claims 1, 15, and 30.

Reconsideration and withdrawal of the rejection of claims 2, 3, 5-14, 16, 18-29 and 31-36 under 35 U.S.C. § 103(a) is therefore respectfully requested.

III. Conclusion

In view of the foregoing, Applicant respectfully requests the reconsideration and withdrawal of the rejections under 35 U.S.C. § 103(a). The U.S. Patent and Trademark Office is hereby authorized to charge any fee deficiency, or credit any overpayment, to our Deposit Account No. 19-0036.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.

Glenn J. Perry
Attorney for Applicant
Registration No. 28,458

Date: 12 May 2009

1100 New York Avenue, N.W.
Washington, D.C. 20005-3934
(202) 371-2600

977673_1.doc